

Senate File 404 - Reprinted

SENATE FILE 404
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO SSB 1060)

(As Amended and Passed by the Senate March 15, 2011)

A BILL FOR

1 An Act relating to health information technology including
2 the creation of a statewide health information exchange,
3 providing for fees, and including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 135D.1 Findings and intent.

2 1. The general assembly finds all of the following:

3 a. Technology used to support health-related functions is
4 widely known as health information technology. Electronic
5 health records are used to collect and store relevant patient
6 health information. Electronic health records serve as a means
7 of bringing evidence-based knowledge resources and patient
8 information to the point of care to support better decision
9 making and more efficient care processes.

10 b. Health information technology allows for comprehensive
11 management of health information and its secure electronic
12 exchange between providers, public health agencies, payers,
13 and consumers. Broad use of health information technology
14 should improve health care quality and the overall health of
15 the population, increase efficiencies in administrative health
16 care, reduce unnecessary health care costs, and help prevent
17 medical errors.

18 c. Health information technology provides a mechanism to
19 transform the delivery of health and medical care in Iowa and
20 across the nation.

21 2. It is the intent of the general assembly to use health
22 information technology as a catalyst to achieve a healthier
23 Iowa through the electronic sharing of health information. A
24 health information exchange involves sharing health information
25 across the boundaries of individual practice and institutional
26 health settings and with consumers. The result is a public
27 good that will contribute to improved clinical outcomes and
28 patient safety, population health, access to and quality of
29 health care, and efficiency in health care delivery.

30 Sec. 2. NEW SECTION. 135D.2 Definitions.

31 For the purposes of this chapter, unless the context
32 otherwise requires:

33 1. "Authorized" means having met the requirements as a
34 participant for access to the health information exchange.

35 2. "Board" means the board of directors of Iowa e-health.

1 3. "*Consumers*" means people who acquire and use goods and
2 services for personal need.

3 4. "*Continuity of care document*" means a summary of a
4 patient's health information for each visit to a provider to be
5 delivered through the health information exchange.

6 5. "*Department*" means the department of public health.

7 6. "*Deputy director*" means the deputy director of public
8 health.

9 7. "*Director*" means the director of public health.

10 8. "*Exchange*" means the authorized electronic sharing
11 of health information between providers, payers, consumers,
12 public health agencies, the department, and other authorized
13 participants utilizing the health information exchange and
14 health information exchange services.

15 9. "*Executive director*" means the executive director of the
16 office of health information technology.

17 10. "*Health information*" means any information, in any
18 form or medium, that is created, transmitted, or received
19 by a provider, payer, consumer, public health agency, the
20 department, or other authorized participant, which relates
21 to the past, present, or future physical or mental health or
22 condition of an individual; the provision of health care to an
23 individual; or the past, present, or future payment for the
24 provision of health care to an individual.

25 11. "*Health information exchange*" means the exclusive
26 statewide electronic health information exchange.

27 12. "*Health information exchange services*" means the
28 exchanging of health information via the health information
29 exchange; education and outreach to support connection and
30 access to and use of the health information exchange; and all
31 other activities related to the electronic exchange of health
32 information.

33 13. "*Health Insurance Portability and Accountability*
34 *Act*" means the federal Health Insurance Portability and
35 Accountability Act of 1996, Pub. L. No. 104-191, including

1 amendments thereto and regulations promulgated thereunder.

2 14. *"Infrastructure"* means technology including
3 architecture, hardware, software, networks, terminology and
4 standards, and policies and procedures governing the electronic
5 exchange of health information.

6 15. *"Iowa e-health"* means the collaboration between the
7 department and other public and private stakeholders to
8 establish, operate, and sustain an exclusive statewide health
9 information exchange.

10 16. *"Iowa Medicaid enterprise"* means Iowa medicaid
11 enterprise as defined in section 249J.3.

12 17. *"Local board of health"* means a city, county, or
13 district board of health.

14 18. *"Office"* means the office of health information
15 technology within the department.

16 19. *"Participant"* means an authorized provider, payer,
17 patient, public health agency, the department, or other
18 authorized person that has agreed to authorize, submit, access,
19 and disclose health information through the health information
20 exchange in accordance with this chapter and all applicable
21 laws, rules, agreements, policies, and procedures.

22 20. *"Participation and data sharing agreement"* means
23 the agreement outlining the terms of access and use for
24 participation in the health information exchange.

25 21. *"Patient"* means a person who has received or is
26 receiving health services from a provider.

27 22. *"Payer"* means a person who makes payments for health
28 services, including but not limited to an insurance company,
29 self-insured employer, government program, individual, or other
30 purchaser that makes such payments.

31 23. *"Protected health information"* means individually
32 identifiable patient information, including demographic
33 information, related to the past, present, or future health
34 or condition of a person; the provision of health care to
35 a person; or the past, present, or future payment for such

1 health care; which is created, transmitted, or received by a
2 participant. *“Protected health information”* does not include
3 education and other records that are covered under the federal
4 Family Educational Rights and Privacy Act of 1974, as codified
5 at 20 U.S.C. 1232g, as amended; or any employment records
6 maintained by a covered entity, as defined under the Health
7 Insurance Portability and Accountability Act, in its role as
8 an employer.

9 24. *“Provider”* means a hospital, physician clinic, pharmacy,
10 laboratory, health service provider, or other person that is
11 licensed, certified, or otherwise authorized or permitted
12 by law to administer health care in the ordinary course of
13 business or in the practice of a profession, or any other
14 person or organization that furnishes, bills, or is paid for
15 health care in the normal course of business.

16 25. *“Public health agency”* means an entity that is governed
17 by or contractually responsible to a local board of health or
18 the department to provide services focused on the health status
19 of population groups and their environments.

20 26. *“Purchaser”* means any individual, employer, or
21 organization that purchases health insurance or services and
22 includes intermediaries.

23 27. *“Vendor”* means a person or organization that provides
24 or proposes to provide goods or services to the department
25 pursuant to a contract, but does not include an employee of the
26 state, a retailer, or a state agency or instrumentality.

27 **Sec. 3. NEW SECTION. 135D.3 Iowa e-health established —**
28 **guiding principles, goals, domains.**

29 1. Iowa e-health is established as a public-private,
30 multi-stakeholder collaborative. The purpose of Iowa e-health
31 is to develop, administer, and sustain the health information
32 exchange to improve the quality, safety, and efficiency of
33 health care available to Iowans.

34 2. Iowa e-health shall manage and operate the health
35 information exchange. Nothing in this chapter shall be

1 interpreted to impede or preclude the formation and operation
2 of regional, population-specific, or local health information
3 exchanges or their participation in the health information
4 exchange.

5 3. Iowa e-health shall facilitate the exchange of health
6 information for prevention and treatment purposes to help
7 providers make the best health care decisions for patients and
8 to provide patients with continuity of care regardless of the
9 provider the patient visits.

10 4. The guiding principles of Iowa e-health include all of
11 the following:

12 a. To engage in a collaborative, public-private,
13 multi-stakeholder effort including providers, payers,
14 purchasers, governmental entities, educational institutions,
15 and consumers.

16 b. To create a sustainable health information exchange which
17 makes information available when and where it is needed.

18 c. To ensure the health information exchange incorporates
19 provider priorities and appropriate participant education.

20 d. To instill confidence in consumers that their health
21 information is secure, private, and accessed appropriately.

22 e. To build on smart practices and align with federal
23 standards to ensure interoperability within and beyond the
24 state.

25 5. The goals of Iowa e-health include all of the following:

26 a. To build awareness and trust of health information
27 technology through communication and outreach to providers and
28 consumers.

29 b. To safeguard privacy and security of health information
30 shared electronically between participants through the health
31 information exchange so that the health information is secure,
32 private, and accessed only by authorized individuals and
33 entities.

34 c. To promote statewide deployment and use of electronic
35 health records.

- 1 *d.* To enable the electronic exchange of health information.
- 2 *e.* To advance coordination of activities across state and
3 federal governments.
- 4 *f.* To establish a governance model for the health
5 information exchange.
- 6 *g.* To establish sustainable business and technical
7 operations for the health information exchange.
- 8 *h.* To secure financial resources to develop and sustain the
9 health information exchange.
- 10 *i.* To monitor and evaluate health information technology
11 progress and outcomes.
- 12 6. Iowa e-health shall include the following five domains:
- 13 *a. Governance.* Iowa e-health shall be governed by a board
14 of directors whose members represent stakeholders such as
15 provider organizations and associations, providers, payers,
16 purchasers, governmental entities, business, and consumers.
17 Iowa e-health shall be supported by the department's office of
18 health information technology. The board shall set direction,
19 goals, and policies for Iowa e-health and provide oversight of
20 the business and technical operations of the health information
21 exchange and health information exchange services.
- 22 *b. Business and technical operations.* The office of health
23 information technology shall perform day-to-day operations
24 to support and advance Iowa e-health, the health information
25 exchange, and health information exchange services.
- 26 *c. Finance.* Iowa e-health shall identify and manage
27 financial resources to achieve short-term and long-term
28 sustainability of the health information exchange, so that the
29 health information exchange is financed by all who benefit
30 from the improved quality, efficiency, and other benefits that
31 result from the use of health information technology.
- 32 *d. Technical infrastructure.* Iowa e-health shall implement
33 and manage the core infrastructure and standards to enable the
34 safe and secure delivery of health information to providers and
35 consumers through the health information exchange.

1 *e. Legal and policy.* Iowa e-health shall establish privacy
2 and security policies and guidelines, and participation and
3 data sharing agreements, to protect consumers and enforce rules
4 for utilization of the health information exchange.

5 Sec. 4. NEW SECTION. 135D.4 **Governance — board of**
6 **directors — advisory council.**

7 1. Iowa e-health shall be governed by a board of directors.
8 Board members shall be residents of the state of Iowa.
9 Notwithstanding sections 69.16 and 69.16A, the persons
10 specified to appoint or designate board members shall consider
11 gender balance and geographic representation in the appointment
12 process.

13 2. The board of directors shall be comprised of the
14 following voting members:

15 *a.* Three members appointed by the governor subject to
16 confirmation by the senate, with one member representing
17 consumers, one member representing small business interests,
18 and one member representing large business interests.

19 *b.* Four members, each of whom is the designee of one of the
20 four largest health care systems in the state.

21 *c.* Two members, one of whom represents rural hospitals and
22 one of whom represents independent hospitals, who are members
23 of the Iowa hospital association, designated by the Iowa
24 hospital association.

25 *d.* Two members who represent two different private health
26 insurance carriers, designated by the federation of Iowa
27 insurers, one of which has the largest health market share in
28 Iowa.

29 *e.* One member representing the department who is designated
30 by the department.

31 *f.* One member representing the Iowa Medicaid enterprise who
32 is the Iowa Medicaid director or the director's designee.

33 *g.* One member who is a licensed physician, designated by the
34 Iowa medical society.

35 *h.* One member who is a licensed practicing physician in an

1 office or clinic setting, designated by the Iowa osteopathic
2 medical association.

3 *i.* One member who is a licensed practicing nurse in an
4 office or clinic setting, designated by the Iowa nurses
5 association.

6 *j.* One member who is a licensed pharmacist practicing in a
7 pharmacy setting, designated by the Iowa pharmacy association.

8 *k.* Two members representing the Iowa collaborative safety
9 net provider network created in section 135.153, designated by
10 the network.

11 *l.* One member representing substance abuse programs,
12 designated by the Iowa behavioral health association.

13 *m.* One at-large board member, who may be appointed by and at
14 the sole discretion of the board.

15 *n.* One member who is a licensed physician designated by the
16 Iowa academy of family physicians.

17 *o.* One member representing community mental health centers,
18 designated by the Iowa association of community providers.

19 *p.* One member representing long-term care providers,
20 designated by the Iowa health care association/Iowa center for
21 assisted living and the Iowa association of homes and services
22 for the aging.

23 *q.* One member representing chiropractors, designated by the
24 Iowa chiropractic society.

25 3. A person shall not serve on the board in any capacity if
26 the person is required to register as a lobbyist under section
27 68B.36 because of the person's activities for compensation
28 on behalf of a profession or an entity that is engaged in
29 providing health care, reviewing or analyzing health care,
30 paying for health care services or procedures, or providing
31 health information technology or health information exchange
32 services.

33 4. *a.* Board members shall serve four-year terms but shall
34 not serve more than two consecutive four-year terms. However,
35 the board members who are the four chief information officers

1 of the four largest health care systems in the state and those
2 representing state agencies are not subject to term limits.

3 *b.* At the end of any term, a member of the board may
4 continue to serve until the appointing or designating authority
5 names a successor.

6 *c.* A vacancy on the board shall be filled for the remainder
7 of the term in the manner of the original appointment. A
8 vacancy in the membership of the board shall not impair the
9 right of the remaining members to exercise all the powers and
10 perform all the duties of the board.

11 *d.* A board member may be removed by the board for cause
12 including but not limited to malfeasance in office, failure
13 to attend board meetings, misconduct, or violation of ethical
14 rules and standards. Nonattendance of board members appointed
15 by the governor shall be governed by the provisions of section
16 69.15. A board member may be removed by a vote of the board if,
17 based on the criteria provided in section 69.15, subsection 1,
18 paragraphs "a" and "b", the board member would be deemed to have
19 submitted a resignation from the board.

20 *e.* The board members shall elect a chairperson from their
21 membership. The department's designee shall serve as vice
22 chairperson.

23 5. Meetings of the board shall be governed by the provisions
24 of chapter 21.

25 *a.* The board shall meet upon the call of the chairperson
26 or the vice chairperson. Notice of the time and place of each
27 board meeting shall be given to each member. The board shall
28 keep accurate and complete records of all of its meetings.

29 *b.* A simple majority of the members shall constitute a
30 quorum to enable the transaction of any business and for the
31 exercise of any power or function of the board. Action may be
32 taken and motions and resolutions adopted by the affirmative
33 vote of a majority of the members attending the meeting whether
34 in person, by telephone, web conference, or other means. A
35 board member shall not vote by proxy or through a delegate.

1 *c.* All board members shall be entitled to reimbursement
2 for actual and necessary expenses incurred in the performance
3 of their official duties as members in accordance with state
4 rules and guidelines. A person who serves as a member of the
5 board shall not by reason of such membership be entitled to
6 membership in the Iowa public employees' retirement system or
7 service credit for any public retirement system.

8 6. The board may exercise its powers, duties, and functions
9 as prescribed by law, independently of the director except in
10 matters involving violation or risk of violation of applicable
11 state or federal laws and regulations; overriding public policy
12 or public safety concerns; or compliance with the office of the
13 national coordinator for health information technology state
14 health information exchange cooperative agreement program or
15 any other cooperative agreement programs or grants supporting
16 Iowa e-health. The board has all powers incidental or
17 necessary to accomplish the purposes of this chapter and shall
18 do all of the following:

19 *a.* Participate in the selection of the executive director
20 and assist in the development of performance standards and
21 evaluations of the executive director.

22 *b.* Establish priorities among health information exchange
23 services based on the needs of the population of this state.

24 *c.* Establish by rule any fees, charges, costs, or expenses
25 that may be collected as the board deems necessary to operate,
26 maintain, support, and sustain the health information exchange
27 and health information exchange services. Any fees or charges
28 established by rule shall be based upon the results of a
29 financial sustainability study conducted by the department, the
30 results of which shall be submitted to the general assembly.

31 *d.* Oversee the handling and accounting of assets and moneys
32 received for or generated by the health information exchange.

33 *e.* Establish committees and workgroups as needed.

34 *f.* Review and approve or disapprove all of the following,
35 as proposed by the department:

1 (1) Strategic, operational, and financial sustainability
2 plans for Iowa e-health, the health information exchange, and
3 health information exchange services.

4 (2) Standards, requirements, policies, and procedures for
5 access, use, secondary use, and privacy and security of health
6 information exchanged through the health information exchange,
7 consistent with applicable federal and state standards and
8 laws.

9 (3) Policies and procedures for administering the
10 infrastructure, technology, and associated professional
11 services necessary for the business and technical operation of
12 the health information exchange and health information exchange
13 services.

14 (4) Policies and procedures for evaluation of the health
15 information exchange and health information exchange services.

16 (5) Mechanisms for periodic review and update of policies
17 and procedures.

18 (6) An annual budget and fiscal report for the operations of
19 the health information exchange and an annual report for Iowa
20 e-health and health information exchange services.

21 (7) Major purchases of goods and services.

22 *g.* Adopt administrative rules pursuant to chapter 17A
23 to implement this chapter and relating to the management
24 and operation of the health information exchange and health
25 information exchange services.

26 *h.* Adopt rules for monitoring access to and use of
27 the health information exchange and enforcement of health
28 information exchange rules, standards, requirements, policies,
29 and procedures. The board may suspend, limit, or terminate a
30 participant's utilization of the health information exchange
31 for violation of such rules, standards, requirements, policies,
32 or procedures, and shall establish, by rule, a process for
33 notification, right to respond, and appeal relative to such
34 violations.

35 *i.* Have all remedies allowed by law to address any violation

1 of the terms of the participation and data sharing agreement.

2 *j.* Perform any and all other activities in furtherance of
3 its purpose.

4 7. *a.* A board member is subject to chapter 68B, the rules
5 adopted by the Iowa ethics and campaign disclosure board, and
6 the ethics rules and requirements that apply to the executive
7 branch of state government.

8 *b.* A board member shall not participate in any matter
9 before the board in which the board member has a direct or
10 indirect interest in an undertaking that places the board
11 member's personal or business interests in conflict with those
12 of Iowa e-health, including but not limited to an interest in
13 a procurement contract, or that may create the appearance of
14 impropriety.

15 8. *Advisory council.*

16 *a.* An advisory council to the board is established
17 to provide an additional mechanism for obtaining broader
18 stakeholder advice and input regarding health information
19 technology, the health information exchange, and health
20 information exchange services.

21 *b.* The members of the advisory council shall be appointed
22 by the board for two-year staggered terms and shall include a
23 representative of all of the following:

- 24 (1) The state board of health.
- 25 (2) Informaticists.
- 26 (3) Academics.
- 27 (4) The Iowa Medicare quality improvement organization.
- 28 (5) The state chief information officer.
- 29 (6) The private telecommunications industry.
- 30 (7) The Iowa collaborative safety net provider network.
- 31 (8) The department of human services.
- 32 (9) Des Moines university.
- 33 (10) The Iowa health care collaborative.
- 34 (11) The department of veterans affairs.
- 35 (12) Consumers.

1 (13) Home health care providers.

2 (14) The state hygienic laboratory.

3 *c.* The board may change the membership and the composition
4 of the advisory council, by rule, to accommodate changes in
5 stakeholder interests and the evolution of health information
6 technology, the health information exchange, and health
7 information exchange services.

8 *d.* Advisory council members shall be entitled to
9 reimbursement for actual and necessary expenses incurred in the
10 performance of their official duties as members in accordance
11 with state rules and guidelines.

12 **Sec. 5. NEW SECTION. 135D.5 Business and technical**
13 **operations — office of health information technology.**

14 1. The office of health information technology is
15 established within the department and shall be responsible for
16 the day-to-day business and operations of Iowa e-health, the
17 health information exchange, and health information exchange
18 services. The office shall be under the direction of the
19 director and under the supervision of the deputy director.

20 2. *a.* The department shall employ an executive director to
21 manage the office and who shall report to the deputy director.

22 *b.* The executive director shall manage the planning and
23 implementation of Iowa e-health, the health information
24 exchange, and health information exchange services, and provide
25 high-level coordination across public and private sector
26 stakeholders.

27 *c.* The executive director shall serve as Iowa's health
28 information technology coordinator and primary point of
29 contact for the office of the national coordinator for health
30 information technology, other federal and state agencies
31 involved in health information technology, and state health
32 information technology coordinators from other states.

33 3. *a.* The executive director and all other employees of
34 the office shall be employees of the state, classified and
35 compensated in accordance with chapter 8A, subchapter IV, and

1 chapter 20.

2 *b.* Subject to approval of the board, the director shall
3 have the sole power to determine the number of full-time and
4 part-time equivalent positions necessary to carry out the
5 provisions of this chapter.

6 *c.* An employee of the office shall not have a financial
7 interest in any vendor doing business or proposing to do
8 business with Iowa e-health.

9 4. The department shall do all of the following:

10 *a.* Develop, implement, and enforce the following, as
11 approved by the board:

12 (1) Strategic, operational, and financial sustainability
13 plans for the health information exchange, Iowa e-health, and
14 health information exchange services.

15 (2) Standards, requirements, policies, and procedures for
16 access, use, secondary use, and privacy and security of health
17 information exchanged through the health information exchange,
18 consistent with applicable federal and state standards and
19 laws.

20 (3) Policies and procedures for monitoring participant
21 usage of the health information exchange and health information
22 exchange services; enforcing noncompliance with health
23 information exchange standards, requirements, policies, rules,
24 and procedures.

25 (4) Policies and procedures for administering the
26 infrastructure, technology, and associated professional
27 services required for operation of the health information
28 exchange and health information exchange services.

29 (5) Policies and procedures for evaluation of the health
30 information exchange and health information exchange services.

31 (6) A mechanism for periodic review and update of policies
32 and procedures.

33 (7) An annual budget and fiscal report for the business
34 and technical operations of the health information exchange
35 and an annual report for Iowa e-health, the health information

- 1 exchange, and health information exchange services.
- 2 *b.* Convene and facilitate board, advisory council,
3 workgroup, committee, and other stakeholder meetings.
- 4 *c.* Provide technical and operational assistance for
5 planning and implementing Iowa e-health activities, the health
6 information exchange, and health information exchange services.
- 7 *d.* Provide human resource, budgeting, project and
8 activity coordination, and related management functions to
9 Iowa e-health, the health information exchange, and health
10 information exchange services.
- 11 *e.* Develop educational materials and educate the general
12 public on the benefits of electronic health records, the health
13 information exchange, and the safeguards available to prevent
14 unauthorized disclosure of health information.
- 15 *f.* Enter into participation and data sharing agreements with
16 participants of the health information exchange.
- 17 *g.* Administer and enforce the collection of fees, charges,
18 costs, and expenses for the health information exchange and
19 health information exchange services.
- 20 *h.* Record receipts and approval of payments, and file
21 required financial reports.
- 22 *i.* Apply for, acquire by gift or purchase, and hold,
23 dispense, or dispose of funds and real or personal property
24 from any person, governmental entity, or organization in
25 the exercise of its powers and performance of its duties in
26 accordance with this chapter.
- 27 *j.* Administer grant funds in accordance with the terms of
28 the grant and all applicable state and federal laws, rules, and
29 regulations.
- 30 *k.* Select and contract with vendors in compliance with
31 applicable state and federal procurement laws and regulations.
- 32 *l.* Coordinate with other health information technology and
33 health information exchange programs and activities.
- 34 *m.* Work to align interstate and intrastate interoperability
35 and standards in accordance with national health information

1 exchange standards.

2 *n.* Execute all instruments necessary or incidental to the
3 performance of its duties and the execution of its powers.

4 Sec. 6. NEW SECTION. 135D.6 Iowa e-health finance fund.

5 1. The Iowa e-health finance fund is created as a separate
6 fund within the state treasury under the control of the board.
7 Fees collected or revenues arising from the operation and
8 administration of the health information exchange and health
9 information exchange services, including but not limited to
10 fees and charges for participants of the health information
11 exchange, donations, gifts, interest, or other moneys, shall be
12 deposited into the fund. Funds generated from fees collected
13 and revenues generated from the health information exchange
14 shall be used to establish, operate, and sustain the health
15 information exchange and health information exchange services.

16 2. Moneys in the fund shall be expended by the department
17 only on activities and operations suitable to the performance
18 of the department's duties on behalf of the board and Iowa
19 e-health as specified in this chapter, subject to board
20 approval. Disbursements may be made from the fund for purposes
21 related to the administration, management, operations,
22 functions, activities, and sustainability of the health
23 information exchange and health information exchange services.

24 3. Notwithstanding section 12C.7, subsection 2, earnings or
25 interest on moneys deposited in the fund shall be credited to
26 the fund. Notwithstanding section 8.33, any unexpended balance
27 in the fund at the end of each fiscal year shall be retained in
28 the fund and shall not be transferred to the general fund of
29 the state.

30 4. The moneys in the fund shall be subject to financial and
31 compliance audits by the auditor of state.

32 5. The general assembly may appropriate moneys in the fund
33 to the department on behalf of Iowa e-health for the health
34 information exchange and health information exchange services.

35 Sec. 7. NEW SECTION. 135D.7 Technical infrastructure.

1 1. The health information exchange shall provide a
2 mechanism to facilitate and support the secure electronic
3 exchange of health information between participants. The
4 health information exchange shall not function as a central
5 repository of all health information.

6 2. The health information exchange shall provide a
7 mechanism for participants without an electronic health record
8 system to access health information from the health information
9 exchange.

10 3. The technical infrastructure of the health information
11 exchange shall be designed to facilitate the secure electronic
12 exchange of health information using functions including but
13 not limited to all of the following:

14 a. A master patient index, in the absence of a single,
15 standardized patient identifier, to exchange secure health
16 information among participants.

17 b. A record locator service to locate and exchange secure
18 health information among participants.

19 c. Authorization, authentication, access, and auditing
20 processes for security controls to protect the privacy of
21 consumers and participants and the confidentiality of health
22 information by limiting access to the health information
23 exchange and health information to participants whose identity
24 has been authenticated, and whose access to health information
25 is limited by their role and recorded through an audit trail.

26 d. Electronic transmission procedures and software necessary
27 to facilitate the electronic exchange of various types of
28 health information through the health information exchange.

29 e. Telecommunications through coordination of public
30 and private networks to provide the backbone infrastructure
31 to connect participants exchanging health information. The
32 networks may include but are not limited to the state-owned
33 communications network, other fiber optic networks, and private
34 telecommunications service providers.

35 4. The state shall own or possess the rights to use all

1 processes and software developed, and hardware installed,
2 leased, designed, or purchased for the health information
3 exchange, and shall permit participants to use the health
4 information exchange and health information exchange services
5 in accordance with the standards, policies, procedures, rules,
6 and regulations approved by the board, and the terms of the
7 participation and data sharing agreement.

8 Sec. 8. NEW SECTION. 135D.8 **Legal and policy.**

9 1. Upon approval from the board, the office of health
10 information technology shall establish appropriate security
11 standards, policies, and procedures to protect the transmission
12 and receipt of individually identifiable health information
13 exchanged through the health information exchange. The
14 security standards, policies, and procedures shall, at a
15 minimum, comply with the Health Insurance Portability and
16 Accountability Act security rule pursuant to 45 C.F.R. pt. 164,
17 subpt. C, and shall reflect all of the following:

18 a. Include authorization controls, including the
19 responsibility to authorize, maintain, and terminate a
20 participant's use of the health information exchange.

21 b. Require authentication controls to verify the identity
22 and role of the participant using the health information
23 exchange.

24 c. Include role-based access controls to restrict
25 functionality and information available through the health
26 information exchange.

27 d. Include a secure and traceable electronic audit system
28 to document and monitor the sender and the recipient of health
29 information exchanged through the health information exchange.

30 e. Require standard participation and data sharing
31 agreements which define the minimum privacy and security
32 obligations of all participants using the health information
33 exchange and health information exchange services.

34 f. Include controls over access to and the collection,
35 organization, and maintenance of records and data for

1 purposes of research or population health that protect the
2 confidentiality of consumers who are the subject of the health
3 information.

4 2. *a.* A patient shall have the opportunity to decline
5 exchange of their health information through the health
6 information exchange. The board shall provide by rule the
7 means and process by which patients may decline participation.
8 A patient shall not be denied care or treatment for declining
9 to exchange their health information, in whole or in part,
10 through the health information exchange. The means and process
11 utilized under the rules shall minimize the burden on patients
12 and providers.

13 *b.* Unless otherwise authorized by law or rule, a patient's
14 decision to decline participation means that none of the
15 patient's health information shall be exchanged through the
16 health information exchange. If a patient does not decline
17 participation, the patient's health information may be
18 exchanged through the health information exchange except as
19 follows:

20 (1) If health information associated with a patient
21 visit with a provider is protected by state law that is
22 more restrictive than the Health Insurance Portability and
23 Accountability Act, a patient shall have the right to decline
24 sharing of health information through the health information
25 exchange from such visit as provided by rule.

26 (2) With the consent of the patient, a provider may
27 limit health information associated with a patient visit
28 from being shared through the health information exchange if
29 such limitation is reasonably determined by the provider, in
30 consultation with the patient, to be in the best interest of
31 the patient as provided by rule.

32 *c.* A patient who declines participation in the health
33 information exchange may later decide to have health
34 information shared through the health information exchange. A
35 patient who is participating in the health information exchange

1 may later decline participation in the health information
2 exchange.

3 3. The office shall develop and distribute educational
4 tools and information for consumers, patients, and providers to
5 inform them about the health information exchange, including
6 but not limited to the safeguards available to prevent
7 unauthorized disclosure of health information and a patient's
8 right to decline participation in the health information
9 exchange.

10 4. *a.* A participant shall not release or use protected
11 health information exchanged through the health information
12 exchange for purposes unrelated to prevention, treatment,
13 payment, or health care operations unless otherwise authorized
14 or required by law. Participants shall limit the use and
15 disclosure of protected health information to the minimum
16 amount required to accomplish the intended purpose of the use
17 or request, in compliance with the Health Insurance Portability
18 and Accountability Act and other applicable federal law. Use
19 or distribution of the information for a marketing purpose, as
20 defined by the Health Insurance Portability and Accountability
21 Act, is strictly prohibited.

22 *b.* The department, the office, and all persons using the
23 health information exchange shall be individually responsible
24 for following breach notification policies as provided by the
25 Health Insurance Portability and Accountability Act.

26 *c.* A provider shall not be compelled by subpoena, court
27 order, or other process of law to access health information
28 through the health information exchange in order to gather
29 records or information not created by the provider.

30 5. *a.* If a patient has declined participation in the health
31 information exchange, the patient's health information may be
32 released to a provider through the health information exchange
33 if all of the following circumstances exist:

34 (1) The patient is unable to provide consent due to
35 incapacitation.

1 (2) The requesting provider believes, in good faith, that
2 the information is necessary to prevent imminent serious injury
3 to the patient. Imminent serious injury includes but it not
4 limited to death, injury or disease that creates a substantial
5 risk of death, or injury or disease that causes protracted loss
6 or impairment of any organ or body system.

7 (3) Such information cannot otherwise be readily obtained.

8 *b.* The department shall provide by rule for the reporting of
9 emergency access and use by a provider.

10 6. All participants exchanging health information and
11 data through the health information exchange shall grant to
12 participants of the health information exchange a nonexclusive
13 license to retrieve and use that information or data in
14 accordance with applicable state and federal laws, and the
15 policies, procedures, and rules established by the board.

16 7. The department shall establish by rule the procedures for
17 a patient who is the subject of health information to do all of
18 the following:

19 *a.* Receive notice of a violation of the confidentiality
20 provisions required under this chapter.

21 *b.* Upon request to the department, view an audit report
22 created under this chapter for the purpose of monitoring access
23 to the patient's records.

24 8. *a.* A provider who relies reasonably and in good faith
25 upon any health information provided through the health
26 information exchange in treatment of a patient shall be immune
27 from criminal or civil liability arising from any damages
28 caused by such reasonable, good faith reliance. Such immunity
29 shall not apply to acts or omissions constituting negligence,
30 recklessness, or intentional misconduct.

31 *b.* A participant that has disclosed health information
32 through the health information exchange in compliance with
33 applicable law and the standards, requirements, policies,
34 procedures, and agreements of the health information exchange
35 shall not be subject to criminal or civil liability for the use

1 or disclosure of the health information by another participant.

2 9. *a.* Notwithstanding chapter 22, the following records
3 shall be kept confidential, unless otherwise ordered by a court
4 or consented to by the patient or by a person duly authorized
5 to release such information:

6 (1) The protected health information contained in, stored
7 in, submitted to, transferred or exchanged by, or released from
8 the health information exchange.

9 (2) Any protected health information in the possession of
10 Iowa e-health or the department due to its administration of
11 the health information exchange.

12 *b.* Unless otherwise provided in this chapter, when using
13 the health information exchange for the purpose of patient
14 treatment, a provider is exempt from any other state law that
15 is more restrictive than the Health Insurance Portability and
16 Accountability Act that would otherwise prevent or hinder the
17 exchange of patient information by the patient's providers.

18 Sec. 9. NEW SECTION. 135D.9 Iowa e-health — health
19 information exchange services.

20 Iowa e-health shall facilitate services through the health
21 information exchange or through other marketplace mechanisms
22 to improve the quality, safety, and efficiency of health care
23 available to consumers. These services shall include but are
24 not limited to all of the following:

25 1. Patient summary records such as continuity of care
26 documents.

27 2. A provider directory and provider messaging.

28 3. Clinical orders and results.

29 4. Public health reporting such as electronic reporting to
30 the statewide immunization registry and reportable diseases.

31 5. Medication history.

32 Sec. 10. NEW SECTION. 135D.10 Governance review and
33 transition.

34 1. *a.* The Iowa e-health governance structure shall
35 continue during the term of the state health information

1 exchange cooperative agreement with the office of the national
2 coordinator for health information technology to address
3 the development of policies and procedures; dissemination
4 of interoperability standards; the initiation, testing, and
5 operation of the health information exchange infrastructure;
6 and the evolution of health information exchange services to
7 improve patient care for the population.

8 *b.* During the final year of the term of the cooperative
9 agreement, the board and the department shall review the
10 Iowa e-health governance structure, operations of the health
11 information exchange, and the business and sustainability plan
12 to determine if the existing Iowa e-health governance structure
13 should continue or should be replaced by any of the following:

14 (1) A public authority or similar body with broad
15 stakeholder representation on its governing board.

16 (2) A not-for-profit entity with broad stakeholder
17 representation on its governing board.

18 2. If the board and department determine that the governance
19 structure should be replaced, Iowa e-health shall develop
20 a transition plan to transfer the responsibilities for the
21 domains specified in section 135D.3.

22 Sec. 11. Section 136.3, subsection 14, Code 2011, is amended
23 to read as follows:

24 14. Perform those duties authorized pursuant to sections
25 ~~135.156~~, 135.159, and 135.161, and other provisions of law.

26 Sec. 12. Section 249J.14, subsection 2, paragraphs a and b,
27 Code 2011, are amended to read as follows:

28 *a.* Design and implement a program for distribution
29 and monitoring of provider incentive payments, including
30 development of a definition of "*meaningful use*" for purposes
31 of promoting the use of electronic medical recordkeeping by
32 providers. The department shall develop this program in
33 collaboration with the department of public health and the
34 ~~electronic health information advisory council and executive~~
35 ~~committee~~ board of directors and the advisory council to the

1 board of Iowa e-health created pursuant to section ~~135.156~~
2 135D.4.

3 *b.* Develop the medical assistance health information
4 technology plan as required by the centers for Medicare and
5 Medicaid services of the United States department of health and
6 human services. The plan shall provide detailed implementation
7 plans for the medical assistance program for promotion of the
8 adoption and meaningful use of health information technology by
9 medical assistance providers and the Iowa Medicaid enterprise.
10 The plan shall include the integration of health information
11 technology and health information exchange with the medical
12 assistance management information system. The plan shall be
13 developed in collaboration with the department of public health
14 and the ~~electronic health information advisory council and~~
15 ~~executive committee~~ board of directors and the advisory council
16 to the board of Iowa e-health created pursuant to section
17 ~~135.156~~ 135D.4.

18 Sec. 13. INITIAL APPOINTMENTS — BOARD.

19 1. The initial appointments of board member positions
20 described in section 135D.4, as enacted by this Act, shall have
21 staggered terms as follows:

22 *a.* The three board members appointed by the governor shall
23 have an initial term of two years, after which the members
24 shall serve four-year terms, subject to the following:

25 (1) The terms shall begin and end as provided in section
26 69.19.

27 (2) Board members appointed by the governor when the senate
28 is not in session shall serve only until the end of the next
29 regular session of the general assembly, unless and until
30 confirmed by the senate.

31 *b.* The board member designated by the Iowa pharmacy
32 association and the at-large board member, if appointed by the
33 board, shall have initial terms of two years, after which the
34 members shall serve four-year terms.

35 *c.* The board members designated by the Iowa hospital

1 association, the Iowa medical society, the Iowa osteopathic
2 medical association, the Iowa nurses association, the Iowa
3 collaborative safety net provider network, the Iowa behavioral
4 health association, the Iowa academy of family physicians,
5 the Iowa association of community providers, the Iowa health
6 care association/Iowa center for assisted living, the Iowa
7 association of homes and services for the aging, and the Iowa
8 chiropractic society shall have initial terms of four years,
9 after which the members shall serve four-year terms.

10 d. The board members designated by the federation of Iowa
11 insurers shall serve initial terms of six years, after which
12 the members shall serve four-year terms.

13 2. With the exception of members not subject to term limits
14 as provided in section 135D.4, board members may serve an
15 additional four-year term, with the exception of those board
16 members initially serving a two-year term, who may serve two
17 consecutive four-year terms following the initial two-year
18 term.

19 Sec. 14. REPEAL. Sections 135.154, 135.155, and 135.156,
20 Code 2011, are repealed.

21 Sec. 15. TRANSITION PROVISIONS. Notwithstanding any other
22 provision of this Act, the department of public health, and the
23 executive committee and the advisory council created pursuant
24 to section 135.156, shall continue to exercise the powers
25 and duties specified under that section until such time as
26 all board members have been appointed as provided in section
27 135D.4, as enacted by this Act.

28 Sec. 16. EFFECTIVE DATE. The sections of this Act repealing
29 sections 135.154, 135.155, and 135.156, and amending sections
30 136.3 and 249J.14, take effect on the date all board members
31 are appointed as provided in section 135D.4, as enacted by this
32 Act. The department of public health shall notify the Code
33 editor of such date.

34 Sec. 17. EFFECTIVE UPON ENACTMENT. Except as otherwise
35 provided in this Act, this Act, being deemed of immediate

1 importance, takes effect upon enactment.